

**POST OFFICE LIMITED**

---

**GENERAL ADVICE**

---

**1. Alternative Fujitsu expert.**

- i. I suggest Fujitsu be told something in the following terms:

Gareth Jennings has provided expert evidence in a number of POL prosecutions. In addition he was involved at least in part with the Second Sight process, by forwarding details of B63 and B14 to SS.

Counsel has advised POL that there ought now to be at least one degree of separation between any expert witness called in support of a POL prosecution and the SS process. Accordingly POL should instruct an alternative expert with the appropriate knowledge of Horizon to provide such evidence. Such an expert should deal both with any new case in addition to those cases presently under prosecution and where Gareth Jenkins has provided a report.

**2. Royal Mail**

- i. It is plain from our discussions that cases prosecuted by RMG prior to the POL/RMG separation will also fall within the scope of the Second Sight Interim report. Accordingly RMG ought to be informed of the fact.

- ii. I would advise that RMG be told of the following matters:

i. Second Sight Interim report is to be published at 6.00pm this evening.

ii. The report highlights a number of areas of concern relating to the operation of Horizon, Horizon and SPMR training and Horizon customer support functions.

- iii. Those areas have implications for the conduct of prosecutions both past and present, in particular relating to prosecution duties of disclosure. These implications apply both to current cases and to those which have now been resolved, whether by conviction after trial or by guilty plea.
- iv. At issue is the reliability (or, in Ct of Appeal language, the “safety”) of any conviction.
- v. Not all cases are susceptible to Court of Appeal interference; indeed it is unlikely that more than a handful of cases will be the subject of reconsideration.
- vi. Regardless of v. above, prosecutors have a continuing duty to ensure that they have at all times acted properly within the prosecutorial function.
- vii. Where the prosecutor (POL or RMG) becomes aware of fresh circumstances (unknown at the time of conviction/plea) which suggest that a conviction may not be safe, the duty in vi. above extends to reviewing both past and present cases so as to ensure that, in the light of the fresh circumstances, any conviction could be said to be safe. That review process consists of considering the cases advanced by POL and the defence; ascertaining whether the fresh circumstances, had they then been known to POL, “...might reasonably be considered capable of undermining the case for the prosecution ...or of assisting the case for the accused....”
- viii. By reason of the matters dealt with in the Second Sight Interim report, the report falls squarely within vii. above.
- ix. Accordingly POL has instructed CK to conduct a review of all cases prosecuted by POL so as to ensure compliance with their duties as prosecutor. Where it is determined that the Second Sight Interim report

and contents fits within the scope of the CPIA 1996 as disclosable to the defence, defence solicitors will be so informed. Thereafter it is a matter for those defendants as to what course they take, POL's duty being satisfied by the conduct of a review process and the informing of those whom ought to have been informed had the matters contained within the Second Sight Interim report been available when prosecuted.

- x. As for cases presently under prosecution but yet to reach trial or plea stage, these cases too are being reviewed so as to ensure that, where relevant, the Second Sight Interim report is appropriately considered.

### **3. Start Date for Review Process**

- i. A number of start-dates are suggested: 12-months back from today: the date of separation of POL from RMG; the initial HOL migration date; others.
- ii. Considerations as to the selection of the start-date include proportionality; resourcing; transparency; and POL reputation. I have come to the view that all of these considerations militate in favour of a date close to the initial HOL migration date of 2010, perhaps using the 1<sup>st</sup> January of that year.
- iii. I arrive at this view not least because any SPMR prosecuted prior to that date would have been prosecuted using original Horizon data; any sentence of imprisonment, Unpaid Work or fine would by now have been completed; and the publicity which is bound to arise once SS has published will place 'older' defendants on notice.